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10 UNITED STATES DISTRICT COURT
 11 DISTRICT OF OREGON AT PORTLAND

12 Atlantic Recording Corporation, a
 13 Delaware corporation; Priority Records,
 14 LLC, a California limited liability
 15 company; Capitol Records, Inc., a
 16 Delaware corporation; UMG Recordings,
 17 Inc., a Delaware corporation; and BMG
 18 Music, a New York general partnership,

19 Plaintiffs,

20 v.

21 Tanya Andersen,

22 Defendant.

No. CV 05-933 AS

Defendant's Second Amended
 Answer, Affirmative Defenses and
 Counterclaims

**AND DEMAND
 FOR JURY TRIAL**

23 Defendant Tanya Andersen submits this amended answer, affirmative defenses and
 24 counterclaims pursuant to this court's order of December 13, 2006. Significant amendments
 25 include affirmative allegations of claims including claims for attorneys' fees and costs. Other
 26 changes are stylistic and non-substantive.

I. ANSWER

1. Answering paragraphs 1-12 and 14 of the Complaint, Ms. Andersen admits that

1 she is a resident of Oregon and that jurisdiction and venue are proper. She specifically denies
2 she downloaded or distributed any music or that any acts of infringement occurred. Ms.
3 Andersen has no ability to determine the accuracy of plaintiffs' claimed corporate forms,
4 principle locations, interest in copyrighted materials and publication of notices of copyright,
5 and on that basis denies these allegations.
6

7 2. Ms. Andersen denies the allegations contained in paragraphs 13 and 15-17 and
8 the remainder of the allegations of plaintiffs' complaint.

9 II. AFFIRMATIVE DEFENSES

10 Ms. Andersen hereby asserts the following Affirmative Defenses in this case:

- 11 1. Plaintiffs are not entitled to equitable relief under the doctrine of unclean hands.
- 12 2. Some or all of plaintiffs' claims are barred by the statutes of limitations.
- 13 3. Plaintiffs have failed to comply with filing requirements.
- 14 4. Plaintiffs have failed to state a claim upon which relief can be granted.
- 15 5. Plaintiffs have failed to join necessary and indispensable parties.
- 16 6. The action is barred by the doctrine of laches.
- 17 7. Plaintiffs' claims are not supported by fact or warranted by law.
- 18 8. Plaintiffs' claims for punitive damages in amounts that are not recoverable are
19 extreme, abusive and unconstitutional.
- 20 9. Plaintiffs have inspected Ms. Andersen's computer, are aware of the error in
21 identifying her and persist in pursuing the unfounded claims against her in
22 violation of FRCP 11 requiring imposition of sanctions under FRCP 11(c).
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26 III. RESERVATION

Ms. Andersen reserves the right to assert third party claims should discovery so indicate.

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IV. COUNTERCLAIMS

Factual Background

A. The Record Companies' "John Doe" Lawsuits

1. For a number of years, a group of large, multinational, multi-billion dollar record companies, including these plaintiffs, have been abusing the federal court judicial system for the purpose of waging a public relations and public threat campaign targeting digital file sharing activities. As part of this campaign, these record companies retained MediaSentry to invade private home computers and collect personal information. Based on private information allegedly extracted from these personal home computers, the record companies have reportedly filed lawsuits against more than 13,500 anonymous "John Does."

2. The anonymous "John Doe" lawsuits are filed for the sole purpose of information farming and specifically to harvest personal internet protocol addresses from internet service providers.

3. After an individual's personal information is harvested, it is given to the record companies' representatives and the anonymous "John Doe" information farming suits are then typically dismissed.

4. The record companies provide the personal information to their agent, the "Settlement Support Center", which engages in prohibited and deceptive debt collection activities and other illegal conduct to extract money from the people allegedly identified from the secret lawsuits. Most of the people subjected to these secret suits do not learn that they have been "sued" until demand is made for payment by the record companies' lawyers or Settlement Support Center.

1 **B. Tanya Andersen has Never Downloaded Music**

2 5. Tanya Andersen is a 42-year-old single mother of an eight-year-old daughter
3 living in Tualatin, Oregon. Ms. Andersen is disabled and has a limited income from Social
4 Security.

5 6. Ms. Andersen has never downloaded or distributed music online. She has not
6 infringed on any of plaintiffs' alleged copyrighted interest.

7 7. Since February 2005, Tanya Andersen has been trying to get the record
8 companies to do one thing: look at her computer so that this nightmare will end. The record
9 companies have been wrongfully accusing Ms. Andersen of downloading and sharing music
10 online. Ms. Andersen, who lives off of a fixed income from Social Security and has no ability
11 to pay to defend a lawsuit, offered her computer to the record companies to inspect before this
12 lawsuit was ever filed. The record companies have refused to look at her computer. Ms.
13 Andersen has never downloaded or distributed music online. She has not infringed on any of
14 plaintiffs' alleged copyright interests. She has nothing to hide. The record companies have
15 harassed her without doing any reasonable inquiry. They have clearly sued the wrong person.
16

17 **C. Tanya Andersen was Secretly Sued**

18 8. Ms. Andersen has been the victim of the record companies' public threat
19 campaign. The threats started when the record companies falsely claimed that Ms. Andersen
20 had been an "unnamed" defendant who was being sued in federal court in the District of
21 Columbia. She was never named in that lawsuit and never received service of a summons and
22 complaint.
23

24 9. Neither did Ms. Andersen receive any timely notice that the suit even existed.
25 That anonymous suit was filed in mid-2004. Ms. Andersen first learned that she was being
26

1 "sued" when she received a letter dated February 2, 2005, from the Los Angeles, California,
2 law firm Mitchell Silverberg & Knupp, LLP. The LA firm falsely claimed that Ms. Andersen
3 had downloaded music, infringed undisclosed copyrights and owed hundreds of thousands of
4 dollars and that "The evidence necessary for the record companies to prevail in this action has
5 already been secured." Ms. Andersen was understandably shocked, fearful, and upset.
6

7 **D. Record Companies Demand that Tanya Andersen Pay them Thousands of**
8 **Dollars**

9 10. After receiving the February 2, 2005 letter, Ms. Andersen contacted the record
10 companies' agent and "representative," which turned out to be Settlement Support Center, LLC.
11 This company was formed by the record companies for the sole purpose of coercing payments
12 from people who had been identified as targets in the anonymous information farming suits.
13 Settlement Support Center is a Washington State phone solicitation company which engages in
14 debt collection activities across the country.
15

16 11. When Ms. Andersen contacted Settlement Support Center, she was advised that
17 her personal home computer had been secretly entered by another record company agent:
18 MediaSentry.

19 12. Settlement Support Center also falsely claimed that Ms. Andersen had "been
20 viewed" by MediaSentry downloading "gangster rap" music at 4:24 a.m. Settlement Support
21 Center also falsely claimed that Ms. Andersen had used the login name
22 "gotenkito@kazaa.com." Ms. Andersen does not like "gangster rap," does not recognize the
23 name "gotenkito," is not awake at 4:24 a.m. and has never downloaded music.
24

25 13. Settlement Support Center threatened that if Ms. Andersen did not immediately
26 pay them, the record companies would bring an expensive and disruptive federal lawsuit using

1 her actual name and they would get a judgment for hundreds of thousands of dollars.

2 **E. The Record Companies Refused to Investigate the False Claim Of Debt**

3 14. Ms. Andersen explained to Settlement Support Center that she had never
4 downloaded music, she had no interest in "gangster rap," and that she had no idea who
5 "gotenkito" was.
6

7 15. Ms. Andersen wrote Settlement Support Center and even invited an inspection
8 of her computer to prove that the claims made against her were false.

9 16. An employee of Settlement Support Center asked Ms. Andersen to help
10 plaintiffs by investigating who could have used her computer or IP address to engage in any of
11 the alleged acts of infringement. Relying on the information provided by Settlement Support
12 Center, Ms. Andersen invested substantial time and resources finding information for plaintiffs'
13 benefit.
14

15 17. In response to the information that Ms. Andersen had provided, an employee of
16 Settlement Support Center admitted to Ms. Andersen that he believed that she had not
17 downloaded any music. He explained, however, that Settlement Support Center and the record
18 companies would not quit their debt collection activities because to do so would encourage
19 other people to defend themselves against the record companies' claims. He stated that
20 plaintiffs did not care whether Ms. Andersen had actually engaged in the alleged infringing
21 activity or not—Ms. Andersen would have to pay thousands of dollars to the record companies
22 immediately, or else she would be subjected to an expensive and intrusive federal lawsuit. The
23 Settlement Support Center employee stated that regardless of whether she had infringed any
24 copyrights, plaintiffs could force Ms. Andersen to pay thousands of dollars by filing a lawsuit.
25
26

18. Ms. Andersen was understandably shocked and upset. In a telephone call with

1 Settlement Support Center in late February 2005, Ms. Andersen offered to provide her
2 computer for inspection before plaintiffs filed any lawsuit and caused her to incur substantial
3 unnecessary costs and additional distress. Ms. Andersen specifically told plaintiffs that their
4 conduct had caused her to suffer a painful medical condition for which she had sought
5 treatment. When she did not receive a response, Ms. Andersen followed up with a letter to
6 Settlement Support Center dated March 6, 2005, in which she asked plaintiffs to inspect her
7 computer to prove that the claims made against her were mistaken:
8

9 "Like I have said several times in this letter, I am innocent from doing what is being
10 alleged. No one in my household has done this either. If there is a way to prove this by
11 looking at my hard drive or something and someone from your agency would like to do
12 that, I have nothing to hide."

13 19. Settlement Support Center insisted that Ms. Andersen's lack of involvement was
14 irrelevant and that the record companies would sue her for hundreds of thousands of dollars
15 whether or not she was actually engaged in the file sharing of music recordings: It didn't matter
16 who did the downloading, she was going to have to pay. Plaintiffs' further threatened that
17 unless Ms. Andersen paid thousands of dollars immediately, they would subject her to an
18 extensive and costly lawsuit.

19 20. Instead of investigating, the record company plaintiffs filed suit this against Ms.
20 Andersen.

21 **F. The Record Companies have no Proof of Infringement.**

22 21. Despite making false representations to Ms. Andersen that they had evidence of
23 infringement and evidence of Ms. Andersen's identity, plaintiffs knew that they had no factual
24 support for their claims. When this complaint was filed, the record companies knew that their
25 investigation could not identify who had committed any of the alleged acts of infringement; knew
26

1 that that there was no evidence that the files allegedly detected were sound recordings; and knew
2 that that the investigation protocol they employed had lead to multiple mistaken identifications in
3 the past.

4 22. In BMG Canada Inc. v. John Doe, 3 F.C. 241 (No. T-292-04 2004), the
5 Canadian Federal Court ruled that the investigation protocols used by the record companies in
6 these cases are so deficient, that the "evidence" gathered fails to establish even a prima facie
7 case of infringement.
8

9 23. MediaSentry's president, Gary Millen testified in a deposition given in that case
10 that merely identifying the assigned owner of an Internet Protocol Address cannot identify *who*
11 was engaged in the alleged file sharing activities because multiple people can be using a single
12 IP address at once and MediaSentry cannot rule out whether any IP address that it traces had
13 been hijacked or spoofed by unknown persons.
14

15 24. Millen admitted that MediaSentry's investigation protocol cannot actually
16 identify the person responsible for the suspected infringement.

17 25. Millen testified that the investigation cannot verify whether the program files
18 identified in the screen shot exhibits are copies of actual sound recordings or program files that
19 look like they might be a sound recording by virtue of their name, title, or other description.
20

21 26. Similarly, the Dutch courts have ruled that that MediaSentry's investigation
22 protocol (providing a list of file names, IP address, and date and time of detection) was
23 insufficient to state a claim for copyright infringement because the record companies were
24 unable to identify what person was using the detected computer and which computer contained
25 the allegedly infringing files. Brein et al v. UPC Nederland B.V. et al., No. 194741/KGZA-05-
26 462/BL/EV at ¶¶ 4.30-31 (2005).

1 27. No downloading or distribution activity was ever actually observed. None ever
2 occurred. Regardless, the record companies actively continued their coercive and deceptive
3 debt collection actions against her. Ms. Andersen was falsely, recklessly, shamefully, and
4 publicly accused of illegal activities in which she was never involved.
5

6 **G. Inspection Proves no Infringement**

7 28. Ms. Andersen has been forced to defend against this frivolous and damaging
8 lawsuit for over 1 ½ years. During this time, Ms. Andersen and her attorneys have repeatedly
9 requested that plaintiffs inspect her computer to confirm that she had not engaged in
10 downloading activities.
11

12 29. After the case was stayed and the court entered an order for inspection of the
13 computer, Ms. Andersen's computer hard drive was copied and a mirror image was evaluated
14 by a neutral expert and plaintiffs' own paid expert in August 2006.

15 30. After inspection of the computer hard drive, plaintiffs refused to disclose the
16 results of their expert's evaluation until the court ordered them to do so in October 2006.

17 31. Even after they were ordered to provide specific information regarding their
18 expert's evaluation, plaintiffs still have refused to identify any evidence on the hard drive
19 supporting claims of downloading activities or infringement.
20

21 32. There is no evidence to support plaintiffs' claims in this case. Plaintiffs and
22 their lawyers are aware that no evidence exists. Plaintiffs started and continue to pursue these
23 claims in violation of law, FRCP 11 and to Ms. Andersen's ongoing injury and harm.

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3 Count 1

4 Electronic Trespass

5 33. Defendant realleges and incorporates herein by reference each of the allegations
6 set forth above. The following claim is made in response to plaintiffs' allegations only. Ms.
7 Andersen never downloaded music, and plaintiffs are aware that she did not.

8 34. Entering a person's personal computer without their authorization to snoop
9 around, steal information, or remove files is a violation of the common law prohibition against
10 trespass to chattels.

11 35. Ms. Andersen's computer, its capacity and its integrity are her personal property.
12 Ms. Andersen had password protection and security in place to protect her computer and
13 personal files from access by others. Ms. Andersen has never engaged in file sharing activities,
14 did not make any portion of her computer available to the public, and did not authorize
15 MediaSentry, the record company plaintiffs, or any of their agents to break into her computer or
16 steal information.

17 36. The record company plaintiffs employed MediaSentry as their agent to break
18 into Ms. Andersen's personal computer (and those of tens of thousands of other people) to
19 secretly spy on and steal information or remove files and, in doing so, the record companies
20 willfully used Ms. Andersen's computer without authorization to appropriate Andersen's
21 personal property for their own purposes. Plaintiffs' unauthorized invasion and use of Ms.
22 Andersen's computer constituted an interference and/or intermeddling with the capacity and
23 integrity of her personal property. MediaSentry did not have Ms. Andersen's permission to
24 inspect, copy, or remove private computer files. If MediaSentry accessed her private computer,
25
26

1 it did so illegally and secretly. In fact, Ms. Andersen was unaware that the trespass occurred
2 until well after she was anonymously sued.

3 37. According to the record companies, the agent, Settlement Support Center used
4 the stolen private information (including an alleged internet protocol address) allegedly
5 removed from her home computer in their attempt to threaten and coerce Ms. Anderson into
6 paying thousands of dollars.
7

8 38. The record companies' conduct resulted in damages and harm to Ms. Andersen's
9 health and property. As a direct result of plaintiffs' interference with the integrity and capacity
10 of her personal computer, Ms. Andersen invested substantial resources into investigating the
11 integrity of her computer and the allegations of infringement at the insistence of the record
12 companies. Plaintiffs' conduct caused Ms. Andersen's medical condition to worsen and flare
13 up, requiring that she return to her doctor and caused her to be unable to return to work. The
14 record companies' conduct resulted in direct and consequential damages, loss, and harm to Ms.
15 Andersen in an amount to be proven at trial.
16

17 Count 2

18 **Computer Fraud and Abuse Act**

19 39. Defendant realleges and incorporates herein by reference each of the allegations
20 set forth above. The following claim is made in response to plaintiffs' allegations only. Ms.
21 Andersen never downloaded music, and plaintiffs are aware that she did not.
22

23 40. Under the provisions of the Computer Fraud and Abuse Act (18 U.S.C. § 1030)
24 it is illegal to break into another person's private computer to spy, steal or remove private
25 information, damage property, or cause other harm and losses. The CFAA prohibits a person
26 from accessing a computer without authorization to "obtain information from any protected

1 computer if the conduct involved an interstate or foreign communication." 18 U.S.C. §
2 1030(a)(2)(C). The CFAA further prohibits a person from breaking into a computer without
3 permission and creates a cause of action where the unauthorized access results in damage, loss,
4 or personal injury. 18 U.S.C. § 1030(a)(5)(B)(iii)..
5

6 41. Ms. Andersen regularly used her personal computer to communicate with friends
7 and family across the country and for interstate e-commerce. Ms. Andersen had password
8 protection and security in place to protect her computer and personal files from access by
9 others. Ms. Andersen has never engaged in file sharing activities, did not make any portion of
10 her computer available to the public, and did not authorize MediaSentry or the record company
11 plaintiffs to break into her computer or steal information.
12

13 42. Ms. Andersen's computer, its capacity and its integrity are her personal property.
14 The record company plaintiffs employed MediaSentry as their agent to bypass Ms. Andersen's
15 computer security systems and break into her personal computer to secretly spy and steal or
16 remove private information. MediaSentry did not have her permission to inspect, copy, or
17 remove her private computer files. It gained access secretly and illegally.
18

19 43. The record companies willfully used Ms. Andersen's computer without
20 authorization to appropriate Andersen's personal property for their own purposes.

21 44. The record companies' conduct resulted in damages and harm to Ms. Andersen's
22 health and property. As a direct result of plaintiffs' interference with the integrity and capacity
23 of her personal computer, Ms. Andersen invested substantial resources into investigating the
24 integrity of her computer. Plaintiffs' conduct caused her medical condition to worsen and flare
25 up, requiring that she return to her doctor and caused her to be unable to return to work. The
26 record companies' conduct resulted in direct and consequential damages, loss, and harm to Ms.

1 Andersen in an amount to be proven at trial in excess of \$5,000.

2 **Count 3**

3 **Invasion of Privacy**

4 45. Defendant realleges and incorporates herein by reference each of the allegations
5 set forth above. The following claim is made in response to plaintiffs' allegations only. Ms.
6 Andersen never downloaded music, and plaintiffs are aware that she did not.

7 46. According to the record companies, Ms. Andersen's personal computer was
8 invaded by MediaSentry after she was identified with a nine digit code (an Internet Protocol
9 Address ("IPA")) obtained from the anonymous information farming lawsuits. MediaSentry
10 did not have permission to inspect Ms. Andersen's private computer files. It gained access only
11 by illegal acts of subterfuge.
12

13 47. Ms. Andersen's computer, its capacity, integrity and the information contained
14 in it are her personal, private property. Ms. Andersen has never engaged in file sharing activities,
15 did not make any portion of her computer available to the public, and did not authorize
16 MediaSentry or the record company plaintiffs to break into her computer or steal information.
17 MediaSentry did not have her permission to inspect, copy, or remove her private computer files.
18

19 48. The record companies' agent has falsely represented that information obtained in
20 this invasive and secret manner is proof of Ms. Andersen's alleged downloading. Ms.
21 Andersen never downloaded music but has been subjected to public derision and
22 embarrassment associated with plaintiffs' claims and public relations campaign.
23

24 49. The record companies have used this derogatory, harmful information to
25 recklessly and shamefully publicly accuse Ms. Andersen of illegal activities without even
26 taking the opportunity offered by Ms. Andersen to inspect her computer.

50. The record companies' conduct resulted in damages including harm to her health and property in an amount to be specifically proven at trial.

Count 4

Abuse of Legal Process

51. Defendant realleges and incorporates herein by reference each of the allegations set forth above.

52. Despite knowing that infringing activity was not observed, the record companies used the threat of expensive and intrusive litigation as a tool to coerce Ms. Andersen to pay many thousands of dollars for an obligation she did not owe. The record companies pursued their collection activities and this lawsuit for the primary purpose of threatening Ms. Andersen (and many others) as part of its public relations campaign targeting electronic file sharing.

53. The record companies have falsely represented and pleaded that information obtained in this invasive and secret manner is proof of Ms. Andersen's alleged downloading and distribution of copyrighted audio recordings. Ms. Andersen never downloaded music but has been subjected to public derision and embarrassment.

54. The record companies' conduct resulted in damages and harm to Ms. Andersen and her property in an amount to be specifically proven at trial.

Count 5

Fraud and Negligent Misrepresentation

55. Defendant realleges and incorporates herein by reference each of the allegations set forth above.

56. The record companies knowingly made materially false representations and omissions of material facts to Ms. Andersen in an attempt to extort money from her. The record

1 companies also knowingly withheld material information from Ms. Andersen in an attempt to
2 extort money from her.

3 57. On February 2, 2005, the record companies wrote a letter demanding that Ms.
4 Andersen contact their collection agent Settlement Support Center. In an attempt to intimidate
5 and scare Ms. Andersen into paying thousands of dollars, the letter made the affirmative false
6 statement that "The evidence necessary for the record companies to prevail in this action has
7 already been secured." The record companies knew that this statement was false because they
8 knew that their investigation could not identify who had committed any of the alleged acts of
9 infringement; knew that that there was no evidence that the files allegedly detected were sound
10 recordings; and knew that that the investigation protocol they employed had lead to multiple
11 mistaken identifications in the past.
12
13

14 58. Between February and March 2005, the record companies, through their
15 collection agent Settlement Support Center, falsely claimed that they had proof that Ms.
16 Andersen's IPA had been "viewed" downloading and distributing over 1,000 audio files for
17 which it sought to collect hundreds of thousands of dollars. This statement was materially
18 false. Ms. Andersen never downloaded or distributed any audio files nor did the record
19 companies or any of their agents ever observe any such activity associated with her personal
20 home computer. Plaintiffs are now, and were at all relevant times, aware that no evidence
21 existed or exists supporting their claims.
22

23 59. Plaintiffs' representatives knowingly and intentionally misrepresented that the
24 record companies had actual evidence that Ms. Andersen had infringed the thousands of file
25 names listed in Exhibit B to plaintiffs' complaint. Plaintiffs used this list of file names as a means
26 to coerce and threaten Ms. Andersen with the prospect of being sued for hundreds of thousands of

1 dollars. Plaintiffs knowingly and intentionally withheld the material fact that it did not know who
2 engaged in any infringing activities and did not know whether any of the thousands of file names
3 contained any copyrighted sound recordings whatsoever. The reason plaintiffs omitted this
4 information was to intimidate Ms. Andersen into paying them thousands of dollars.
5

6 60. Ms. Andersen had no access to the information that the record companies falsely
7 claimed to have received from MediaSentry. Ms. Andersen had no way of knowing that the
8 record companies were withholding and omitting information from her, on which they intended
9 she rely.

10 61. The record companies had a duty to conduct a reasonable investigation into the
11 information that it was representing as true. The record companies breached that duty. Even after
12 being ordered to conduct an investigation and disclose its results, the record companies persist in
13 their false claims.
14

15 62. The record companies' conduct resulted in damages and harm to Ms. Andersen's
16 health and property in an amount to be specifically proven at trial. As a direct result of
17 plaintiffs' materially false representations and omissions of material facts, Ms. Andersen invested
18 substantial resources into investigating the integrity of her computer and investigating the
19 claims of infringement at the request of the record companies. Plaintiffs' conduct caused her
20 medical condition to flare up and worsen, requiring that she return to her doctor and caused her
21 to be unable to return to work. The record companies' conduct resulted in direct and
22 consequential damages, loss, and harm to Ms. Andersen in an amount to be proven at trial.
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Count 6

Outrage

63. Ms. Andersen realleges and incorporates herein by reference each of the allegations set forth above.

64. The record companies' outrageous conduct, including threats, intimidation, and coercion, was intended to and actually caused Ms. Andersen extreme emotional distress.

65. The record companies' conduct was without any reasonable basis and reckless in that it did not investigate its claims before initiating this action and in continuing to pursue this action when it knows that no facts or evidence exists to support their claims.

66. Despite having never observed any downloading or distribution associated with Ms. Andersen's personal home computer; despite refusing Ms. Andersen's offer to allow an inspection of her own computer; and, after confirming that she did not download music the record companies wrongfully continued their improper debt collection activities against her.

67. The record companies pursued debt collection activities for the inappropriate purpose of illegally threatening Ms. Andersen and many thousands of others. This tortious abuse was motivated by and is a central part of a public relations campaign targeting electronic file sharing.

68. An employee of Settlement Support Center admitted to Ms. Andersen that he believed that she had not downloaded any music. He explained that Settlement Support Center and the record companies would not quit the debt collection activity against her because to do so would encourage other people to defend themselves against the record companies' claims.

69. The record companies were aware of Ms. Andersen's disabilities and her serious health issues. Settlement Support Center knew that its conduct would cause extreme distress in

1 Ms. Andersen. As a result of defendant's conduct, Ms. Andersen suffered severe physical and
2 emotional distress and health problems.

3 70. The record companies' conduct resulted in damages, including harm to Ms.
4 Andersen's health and property in an amount to be specifically proven at trial.
5

6 **Count 7**

7 **Deceptive Business Practices**

8 71. Defendant realleges and incorporates herein by reference each of the allegations
9 set forth above.

10 72. Oregon's Unlawful Trade Practices Act prohibits those in trade or commerce
11 from engaging in unfair or deceptive practices in the course of business with consumers. ORS
12 646.605 *et seq.*
13

14 73. The record companies' agent, Settlement Support Center, is a company doing
15 business in Washington which was established to engage in debt collection activities in many
16 states, including Washington and Oregon.

17 74. Settlement Support Center acting as the record companies' agent made false and
18 deceptive statements to Ms. Andersen in an attempt to mislead, threaten, and coerce her into
19 paying thousands of dollars.
20

21 75. Settlement Support Center acting as the record companies' agent has made
22 similar false and deceptive statements to many other residents of Washington and Oregon, and
23 across the country. The public interest has been and continues to be directly impacted by
24 plaintiffs' deceptive practices.

25 76. The record companies intended that Ms. Andersen believe their false statements
26 and rely on their omissions so that she would be frightened and coerced into paying them

1 thousands of dollars. The record companies' misrepresentations and omissions created an
2 unreasonable risk that Ms. Andersen would rely upon their misrepresentations and omissions to
3 her detriment.

4 77. Ms. Andersen had no access to the information that the record companies falsely
5 claimed to have received from MediaSentry. Ms. Andersen had no way of knowing that the
6 record companies were withholding and omitting information from her, on which they intended
7 she rely. As a result, Ms. Andersen was justified in relying on plaintiffs' representations and
8 acting on their omissions, which she in fact did.

9 78. The record companies' conduct resulted in damages and harm to her health and
10 property in an amount to be specifically proven at trial. As a direct result of plaintiffs'
11 materially false representations and omissions of material facts, Ms. Andersen invested
12 substantial resources into investigating the integrity of her computer and investigating the
13 claims of infringement for the benefit of the record companies. Plaintiffs' conduct caused her
14 medical condition to flare up, requiring that she return to her doctor and caused her to be unable
15 to return to work. The record companies' conduct resulted in direct and consequential
16 damages, loss, and harm to Ms. Andersen.

17 79. The record companies' conduct resulted in damages and harm to Ms. Andersen
18 and her property in an amount to be specifically proven at trial.

19 **Count 8**

20 **Oregon Racketeer Influenced and Corrupt Organization Act**

21 80. Defendant realleges and incorporates herein by reference each of the allegations
22 set forth above.

23 81. The Oregon Racketeer Influenced and Corrupt Organization Act prohibits

1 companies from engaging in organized racketeering or criminal activities. ORS 166.715 *et seq.*
2 ORICO provides that it is unlawful for any person employed by, or associated with, any
3 enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of
4 racketeering activity or the collection of an unlawful debt. ORS 166.720(3).
5

6 82. Atlantic Recording Corporation, a Delaware corporation; Priority Records, LLC,
7 a California limited liability company; Capitol Records, Inc., a Delaware corporation; UMG
8 Recordings, Inc., a Delaware corporation; and BMG Music, a New York general partnership,
9 MediaSentry, Inc. and Settlement Support Center, LLC, all worked together for the purpose of
10 waging a public relations and public threat and intimidation campaign targeting, in part,
11 innocent people in an attempt to collect thousands of dollars.
12

13 83. As part of this enterprise, these record companies retained MediaSentry to
14 invade private home computers and collect personal information. Based on private information
15 allegedly extracted from these personal home computers, the record companies have reportedly
16 filed lawsuits against more than 13,500 anonymous "John Does." The anonymous "John Doe"
17 lawsuits are filed for the sole purpose of information farming and specifically to harvest
18 personal internet protocol addresses from internet service providers.
19

20 84. After an individual's personal information is harvested, it is given to the record
21 companies' representatives and the anonymous "John Doe" information farming suits are then
22 typically dismissed and the record companies provide the personal information to Settlement
23 Support Center. Settlement Support Center in turn engages in coercive and deceptive collection
24 activities and other illegal conduct to extract money from the people allegedly identified from
25 the secret lawsuits. Using this stolen information, plaintiffs directed Settlement Support Center
26 to threaten Ms. Andersen into paying plaintiffs thousands of dollars, which is a violation of

1 ORS 163.275 and a violation of ORS 166.720(3).

2 85. Even where a Settlement Support Center employee believed that Ms. Andersen
3 did not engage in any infringing activities, plaintiffs directed Settlement Support Center to
4 continue to pressure and coerce Andersen into paying thousands of dollars. An employee of
5 Settlement Support Center explained that the record companies would not quit their debt
6 collection activities because to do so would encourage other people to defend themselves
7 against the record companies' claims. He stated that plaintiffs did not care whether it was Ms.
8 Andersen or not—Ms. Andersen would have to pay thousands of dollars to the record
9 companies immediately, or else she would be subjected to an expensive and intrusive federal
10 lawsuit.

11
12 86. While plaintiffs participate in the enterprise, they also have an existence separate
13 and distinct from the enterprise.

14
15 87. Plaintiffs' acts form a pattern of racketeering by committing at least two acts of
16 racketeering activity. This pattern constituted a common course of conduct used by plaintiffs to
17 target thousands of citizens throughout the United States. These activities shared the common
18 objectives of seeking payment of thousands of dollars from each person targeted, regardless of
19 their innocence. These acts had the same or similar purposes, results, participants, victims and
20 methods of commission. The predicate acts of racketeering include, but are not limited to
21 attempted violations of Oregon's coercion statute ORS 163.275 and furtherance of a plan to
22 commit coercion is a violation of ORICO 166.720(3).

23
24 88. These unlawful activities were not isolated. The record companies have
25 repeated this coercive conduct with many other victims throughout the United States.
26 Settlement Support Center has reportedly engaged in the same pattern of threatening and

1 coercive conduct. In 2004, the record companies targeted another innocent person in this
2 scheme. When presented with evidence that the defendant did not engage in any of the
3 downloading activities, plaintiffs insisted that her lack of involvement was irrelevant and that
4 plaintiffs reportedly threatened that they would sue her for hundreds of thousands of dollars
5 whether or not she had ever engaged in the alleged file sharing, "It didn't matter. Someone is
6 responsible and someone is going to have to pay." Motown Records, et al. v. Nelson, No. 04-
7 73646 (E.D. MI).

9 89. The record companies and their agents stood to financially benefit from these
10 deceptive and unlawful acts. Proceeds from these activities are used to fund the operation of
11 the record companies' continued public threat campaigns.

12 90. The record companies' racketeering conduct directly and proximately resulted in
13 damages, including harm to Ms. Andersen's health and property in an amount to be specifically
14 proven at trial.

15 91. As fully set forth above, the record companies falsely allege that they hired
16 MediaSentry to break into private computers to spy, view files, remove information, and copy
17 images. The record companies further falsely claim that they received and transmitted the
18 information and images to Settlement Support Center. As the record companies' agent,
19 Settlement Support Center falsely claim that the stolen information and images showed that Ms.
20 Andersen had downloaded and distributed over 1,000 audio files. The record companies falsely
21 claim that Ms. Anderson owed hundreds of thousands of dollars in an attempt to coerce and
22 extort payment from her.

23 92. By their claim, the record companies directed its agents to unlawfully break into
24 thousands of private computers and engage in extreme acts of unlawful coercion, extortion,
25
26

1 fraud, and other criminal conduct.

2 93. The record companies and their agents stand to financially benefit from these
3 deceptive and unlawful acts. Proceeds from these activities are used to fund the operation of
4 the record companies' continued public threat campaigns.
5

6 94. These unlawful activities were not isolated. The record companies have
7 repeated these unlawful and deceptive actions with many other victims throughout the United
8 States.

9 95. The record companies' conduct resulted in damages, including harm to Ms.
10 Andersen's health and property in an amount to be specifically proven at trial.
11

12 **Count 9**

13 **Attorneys' Fees and Costs for Defending Meritless Copyright Infringement Suit**

14 96. Defendant realleges and incorporates herein by reference each of the allegations
15 set forth above.

16 97. Plaintiffs wrongfully and in violation of law and FRCP 11 initiated a meritless
17 lawsuit against Ms. Andersen. After starting the lawsuit plaintiffs received additional
18 information confirming that their allegations of copyright infringement were without basis.
19 Despite this, plaintiffs continue to pursue these claims in further violation of law, FRCP 11 to
20 Ms. Andersen's ongoing injury and harm.
21

22 98. Ms. Andersen is entitled to an award of all reasonable attorneys' fees and costs
23 in defending plaintiffs' meritless lawsuit pursuant to 17 U.S.C. § 505 and FRCP 11.
24

25 **I. PRAYER FOR RELIEF**

26 WHEREFORE, the plaintiff prays for:

a. Dismissal of the plaintiffs' claims with prejudice;

- 1 b. An order that plaintiffs shall take no relief from their complaint herein;
2 c. All direct and consequential damages necessary to compensate Ms. Andersen;
3 d. Declaratory and Injunctive relief;
4 e. Statutory and punitive damages awardable under ORS 646.605 *et seq* and ORS
5 166.715 *et seq*;
6 f. Attorneys' fees and costs awardable under ORS 646.605 *et seq.*, ORS 166.715 *et*
7 *seq.*, 17 U.S.C. § 505;
8 g. For post-judgment interest on the entire judgment until paid in full;
9 h. For sanctions pursuant to FRCP 11; and
10 i. For such other and further relief as the Court may deem just and equitable.
11
12

13 **DEMAND FOR JURY TRIAL**

14 Respectfully submitted this 27th day of March, 2007.

15 Lybeck Murphy, LLP

16 By: /s/ Lory R. Lybeck
17 Lory R. Lybeck (OSB #83276)
18 Attorneys for plaintiffs
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

AFFIDAVIT OF SERVICE

State of Washington)
) ss.
County of King)

I hereby certify and declare that on the 27th day of March, 2007, I electronically filed the foregoing Defendant's Second Amended Answer, Affirmative Defenses and Counterclaims with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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All parties are registered as CM/ECF participants for electronic notification.

DATED at Mercer Island, Washington, this 27th day of March, 2007.

 /s/ Lory R. Lybeck

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